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NEW DELHI, MONDAY, AUGUST 29, 1988/BHADRA 7, 1910

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन
के रूप में रखा जा सके ।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on 29th August, 1988:—

BILL No. 103 of 1988

A Bill to consolidate, and amend the law relating to defamation and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Defamation Act, 1988.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

2. (1) In this Act, unless the context otherwise requires,—

(a) "Code" means the Code of Criminal Procedure, 1973;

(b) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

Short
title, ex-
tent and
commence-
ment.

Definition.

(2) Any reference in this Act to the Code or any provision thereof shall, in relation to an area in which the Code or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

CHAPTER II

DEFAMATION

Defamation.

3. Whoever by words, either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation I.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person, if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation II.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation III.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation IV.—No imputation is said to harm a person's reputation unless,—

(a) that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, in respect of his caste or his calling or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful; or

(b) that imputation exposes, directly or indirectly such person to hatred, contempt or ridicule or disparages or causes injury to such person in his trade, business, profession, calling or office.

Exception.

4. Nothing in section 3 shall apply to—

(i) the imputation of anything which is true concerning any person, if it be for the public good that the imputation should be made or published and it is a question of fact as to whether it is for the public good;

(ii) the expression in good faith of any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further;

(iii) the expression in good faith of any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further;

(iv) the publication of a substantially true report of the proceedings of a Court or Tribunal or of the result of any such proceedings;

(v) the expression in good faith of any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court, or respecting the conduct of any person as a party, witness or agent in any such case, or respecting the character of such person, so far as his character appears in that conduct, and no further;

(vi) the expression in good faith of any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further;

(vii) the passing in good faith any censure on the conduct of a person by a person having authority over that other person either conferred by law or arising out of a lawful contract made with that other in matters to which such lawful authority relates;

(viii) the preferring in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of the accusation;

(ix) the imputation on the character of another provided that the imputation is made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good;

(x) the conveying of a caution, in good faith, to one person against another, provided that such caution is intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

5. (1) Whoever defames another shall in the case of the first offence, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both, and, in the case of a second or subsequent offence, with imprisonment which may extend to five years or with fine which may extend to five thousand rupees, or with both.

Punishment
for
defama-
tion.

(2) Where the offence has been committed by publishing an imputation in a newspaper, the Court convicting the offender may further order that its judgment shall be published, in whole or in part, in such newspaper and in such manner as it may specify.

(3) The cost of such publication shall be recoverable from the convicted person as if it were a fine.

Explanation.—The Court may, before passing a sentence under this section, take into consideration the question whether the guilt of the accused is aggravated by the plea and the nature of the evidence adduced to prove or disprove it.

6. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall, in the case of the first offence, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both, and, in the case of a second or subsequent offence, with imprisonment which may extend to five years, or with fine which may extend to five thousand rupees, or with both.

Printing or
engraving
matter
known
to be
defama-
tory.

Sale of
printed or
engraved
substance
containing
defamatory
matter.

Printing,
etc., of
grossly in-
decent or
scurrilous
matter or
matter in-
tended for
blackmail.

7. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

8. Where any matter which is grossly indecent or scurrilous or is intended for blackmail is published in any newspaper, periodical or circular, the author of such matter and the printer, publisher and editor of such newspaper, periodical or circular shall, in the case of the first offence, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both, and in the case of a second or subsequent offence, with imprisonment for a term which may extend to five years or with fine which may extend to five thousand rupees, or with both.

Explanation I.—It shall not be scurrilous,—

(a) to make any imputation concerning any person which is true, if it is for the public good that such imputation should be made or published and it is a question of fact as to whether it is for public good; and

(b) to express in good faith any opinion respecting the conduct of,—

(i) a public servant in the discharge of his public functions or respecting his character so far as his character appears in that conduct and no further, or

(ii) any person touching any public question, and respecting his character, so far as his character appears in that conduct and no further.

Explanation II.—In deciding whether any person has committed an offence under this section, the Court shall have regard, *inter alia*, to the following considerations, namely:—

(a) the general character of the person charged, and where relevant, the nature of his business;

(b) the general character and dominant effect of the matter alleged to be grossly indecent or scurrilous or intended for blackmail;

(c) any evidence offered or called by or on behalf of the accused person as to his intention in writing, printing or publishing such matter.

Uninten-
tional
defamation.

9. (1) A person who has published any matter alleged to be defamatory of another person may, if he claims that the matter was published by him innocently in relation to that other person, make an offer of amends under this section.

(2) An offer of amends shall—

(a) be in writing;

(b) be expressed to be made for the purposes of this section;

(c) affirm that the person who has published the matter in question (hereafter in this section referred to as "the publisher") published the matter innocently in relation to the party aggrieved;

(d) include an offer to publish, or join in the publication of, a suitable correction of the matter complained of and a sufficient apology.

Explanation.—Where the matter alleged to be defamatory is published in a newspaper, periodical or circular, the correction and apology made in pursuance of the offer of amends shall be published in the same manner and with the same prominence as the matter alleged to be defamatory was published.

(3) If an offer of amends is accepted by the party aggrieved and is duly performed, no proceedings for defamation shall be taken or continued by that party against the publisher in respect of the publication in question, but without prejudice to any proceeding against any other person jointly responsible for that publication.

(4) If an offer of amends is not accepted by the party aggrieved, it shall be a defence, for the publisher, in any proceedings for defamation against him in respect of the publication in question to allege and prove—

(a) the facts and circumstances which establish that the matter was published innocently in relation to the party aggrieved;

(b) that the offer made fulfilled the requirements of clauses (a), (b) and (d) of sub-section (2) of this section; and

(c) that the offer has not been withdrawn.

(5) For the purposes of this section, any matter shall be treated as published by the publisher innocently in relation to the party aggrieved if, and only if, the following conditions are satisfied, that is to say—

(a) that the publisher did not intend to publish it concerning that party and did not know of the circumstances by virtue of which it might be understood to refer to him; or

(b) that the matter was not defamatory on the face of it, and the publisher did not know of the circumstances by virtue of which it might be understood to be defamatory of that party aggrieved,

and, in either case, that the publisher exercised all reasonable care in relation to the publication.

10. In an action for defamation in respect of any matter consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if, having regard to such of the facts alleged or referred to in the matter complained of as are proved, the expression of opinion is fair comment.

Fair
comment.

11. Notwithstanding anything contained in this Act, the publication of any of the following statements shall not constitute defamation, namely:—

Certain
statements
not to
constitute
defamation.

(a) a fair and accurate report of any proceedings in public of—

(i) a legislature of any foreign country;

(ii) an international organisation of which India is a member, or of organisations recognised by the United Nations, or of any international conference to which the Government of India sends a representative;

(iii) an international court;

(iv) a court of any foreign country;

(v) a fair and accurate report of or extract from any registry kept in pursuance of any Central, Provincial or State Act, which is open to inspection by the public, or of any other document which is required by law for the time being in force in any part of India to be open to inspection by the public; or

(b) a notice or advertisement published by or under the authority of any Court, Tribunal or commission of inquiry or a committee of investigation constituted by any lawful authority in India;

(c) a fair and accurate report of the findings or decisions of any of the following associations or of any committee or governing body thereof in relation to a person who is a member of, or is subject by virtue of any contract to, the control of, any such association or, of any committee or governing body thereof, that is to say—

(i) an association formed in India for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudicate upon, matters of interest or concern to the association, or the actions or conduct of any person subject to such control or adjudication;

(ii) an association formed in India for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or taking part in the game, sport or pastime.

(d) a fair and accurate report of the proceedings of any meeting or sitting of—

(i) any local authority or committee of a local authority;

(ii) any commission, tribunal, committee or person appointed for the purposes of any inquiry under a Central, Provincial or State Act by the appropriate government;

(iii) any person appointed by a local authority to hold a local inquiry in pursuance of any Central, Provincial or State Act;

(iv) any other tribunal, board, committee or body constituted by or under and exercising functions under a Central, Provincial or State Act,

not being a meeting or sitting admission to which is denied to representatives of newspapers and other members of the public;

1 of 1956.

(e) a fair and accurate record of the proceedings at a general meeting of any company or association constituted, registered or certified by or under a Central, Provincial or State Act not being a private company within the meaning of the Companies Act, 1956;

(f) any notice or other matter issued for the information of the public by or on behalf of Government or a local authority.

12. For the removal of doubts, it is hereby declared that where a person accused of any offence under this Chapter claims that the imputation made or published by him or that the statement published by him is excepted under section 4, or, as the case may be, under section 11, the onus of proving such claim shall be on him and the prosecution shall have the right to lead evidence in rebuttal.

Burden of proof.

CHAPTER III

CRIMINAL IMPUTATION

13. (1) Notwithstanding anything contained in Chapter II of this Act, whoever, by words, either spoken or intended to be read or by signs or by visible representations, makes or publishes any imputation falsely alleging that any person has committed an offence, or has done or omitted to do any act which amounts to an offence, under any law for the time being in force, shall, in the case of the first offence, be punishable with imprisonment for a term which shall not be less than one month, but which may extend to one year and with fine which may extend to two thousand rupees, and, in the case of a second or subsequent offence, with imprisonment for a term which shall not be less than three months, but which may extend to two years and with fine which may extend to five thousand rupees.

Offence of criminal imputation.

(2) Notwithstanding anything contained in the Code, where any offence under sub-section (1) is alleged to have been committed against any person, a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by such person.

(3) Every complaint referred to in sub-section (2) shall be supported by an affidavit which shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) Where a Court of Session takes cognizance of an offence under this section, it shall cause a notice to be sent to the accused along with a copy of the affidavit referred to in sub-section (3), calling upon him to appear before it on a date and time to be specified in the notice (not being a date later than four weeks from the date of said notice) along with the necessary documents, materials or other evidence on which he relies for his defence.

Trial of
offence
under this
Chapter.

14. (1) Notwithstanding anything contained in the Code, an offence under sub-section (1) of section 13 shall be triable only by a Court of Sessions.

(2) A Court of Session taking cognizance of an offence under sub-section (1) of section 13, shall try the case in accordance with the procedure for the trial of a summons case specified in the Code and, if the Court thinks fit, the case may be tried in a summary way and the provisions of sections 262 to 264 (both inclusive) of the Code shall apply to such trial:

Provided that in the case of any conviction in a summary way, it shall be lawful for the Court to pass a sentence of imprisonment for a term up to the maximum period provided in section 13.

(3) Every trial under this Chapter shall, as far as possible, be on a day to day basis and concluded within a period of three months from the date specified in the notice calling upon the accused to appear before the Court under sub-section (4) of section 13.

Excep-
tions and
burden of
proof.

15. (1) Notwithstanding anything contained in this Act, a person accused of any offence under this Chapter shall not be guilty of the offence if, and only if, it is established that the imputation made or published by him is true and if it be for the public good that the imputation should be made or published and it is a question of fact as to whether it is for the public good.

(2) The onus of establishing that the imputation is true and it is for the public good under sub-section (1) shall be on the accused and the prosecution shall have the right to lead evidence in rebuttal.

Appeal.

16. (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment of the Court of Session to the High Court, both on facts and on law.

(2) Every appeal to the High Court under sub-section (1) shall be referred within a period of thirty days from the date of the judgment appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

Power of
High
Court to
make
rules.

17. The High Court may, by notification in the Official Gazette, make such rules, if any, as it may deem necessary for the purpose of filing an appeal to it under this Chapter.

CHAPTER IV

MISCELLANEOUS

Applica-
tion of the
Code to
offences
under this
Act sub-
ject to cer-
tain modi-
fications.

18. (1) Section 205 of the Code shall, in its application to any proceedings in relation to an offence under this Act, have effect subject to the modification that in sub-section (1) of that section, the following proviso shall be inserted, namely:—

“Provided that where the accused, being the editor, publisher or printer of a newspaper or periodical is prosecuted for an offence under the Defamation Act, 1988, the Court shall not dispense with his per-

sonal attendance if it is proved that he has refused within a reasonable time, to publish any reply of the person against whom any imputation relating to such offence was made, in the same manner and with the same prominence as the imputation was published in that newspaper or periodical.”.

(2) Notwithstanding anything contained in the Code, every offence under this Act shall be non-cognizable and bailable.

(3) Where the trial of any offence under this Act is conducted *in camera*, it shall not be lawful for any person to print or publish any matter in relation to any such trial except with the previous permission of the Court, and whoever prints or publishes such matter without such permission shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

19. In every case of an offence under this Act punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in the case of every such offence punishable with imprisonment or fine, in which the offender is sentenced to a fine, the provisions of sections 64 to 70 (both inclusive) of the Indian Penal Code shall, as far as may be, apply.

Sentence of imprisonment for non-payment of fine.

45 of 1860.

20. The provisions of this Act or any order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other enactment or in any instrument having effect by virtue of any other enactment.

Act to have overriding effect.

45 of 1860.

21. (1) Chapter XXI of the Indian Penal Code shall be omitted.

10 of 1897.

45 of 1860.

(2) The provisions of section 6 of the General Clauses Act, 1897 shall apply to the omission of Chapter XXI of the Indian Penal Code under sub-section (1) as if the said Chapter had been repealed by a Central Act.

Repeal and saving.

22. In the Code,—

(a) in section 199,—

(i) in sub-sections (1) and (2), for the words and figures “Chapter XXI of the Indian Penal Code”, the words and figures “the Defamation Act, 1988” shall be substituted;

45 of 1860.

(ii) in sub-section (6), for the word “Magistrate”, at both the places where it occurs, the words “Magistrate, or, as the case may be, the Court of Session” shall be substituted;

(b) in the First Schedule, under heading “I.—OFFENCES UNDER THE INDIAN PENAL CODE”, the sub-heading “CHAPTER XXI.—DEFAMATION” and the entries thereunder shall be omitted.

45 of 1860.

Amendment of the Code.

STATEMENT OF OBJECTS AND REASONS

Sections 499 to 502 of Chapter XXI of the Indian Penal Code deal with the offence of defamation and the punishment therefor. In its 42nd Report, the Law Commission had suggested certain amendments to these provisions. Accordingly, amendments to these sections had been included in the Indian Penal Code (Amendment) Bill, 1978, which, after having been passed by the Rajya Sabha, lapsed on the dissolution of the Lok Sabha in 1979. The Second Press Commission also had, in its report submitted in 1984, recommended amendments to the law of defamation in certain respects like protecting unintentional defamation, fair comment and certain types of privileged statements. These recommendations relate to procedural matters. Further, it is proposed to make publication of imputations falsely alleging commission of offences by any person as an offence. Those who make such imputations often have no intention of pursuing the matter any further with the appropriate authorities. Their only intention appears to be to bring a person's reputation into question. It is considered necessary to check this tendency so that freedom of speech, which is the very essence of democracy, does not degenerate into mere licence. In view of the above, it is considered advisable to have a self-contained law on defamation covering both substantive and procedural aspects.

2. The Bill accordingly seek to achieve the above objects and makes *inter alia* the following provisions to deal with offences of defamation more effectively, namely:—

(a) incorporation of the existing provisions of Chapter XXI of the Indian Penal Code with certain amendments thereto recommended by the Law Commission of India;

(b) punishment for publication in any newspaper or periodical of grossly indecent or scurrilous matter or matter intended for blackmail, on the lines of the proposed section 292A in the lapsed Indian Penal Code (Amendment) Bill, 1978;

(c) provisions to give effect to certain recommendations of the Second Press Commission for protecting unintentional defamation, fair comment and certain types of privileged statements;

(d) provision to punish imputations falsely alleging commission by any person of an offence under any law for the time being in force and to provide for the trial of such offence by a Court of Session.

NEW DELHI;
The 22nd August, 1988.

P. CHIDAMBARAM.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 16 of the Bill seeks to empower the High Court to frame such rules, if any, as it may deem necessary for the purpose of entertaining appeals filed to it against the judgments of Sessions Court in relation to the offence under Chapter III of the Bill.

2. The delegation of power under this provision pertains to a matter of detail and procedure and is of a normal character.

BILL NO. 102 OF 1988

A Bill further to amend the Commissions of Inquiry Act, 1952.

Be it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

Short
title.

1. This Act may be called the Commissions of Inquiry (Amendment) Act, 1988.

Insertion of
new section 5B.

2. After section 5A of the Commissions of Inquiry Act, 1952 (hereinafter referred to as the principal Act), the following section shall be inserted, namely:—

60 of 1952.

Power of
Commission to
appoint
assessors.

“5B. The Commission may, for the purpose of conducting any inquiry, appoint persons having special knowledge of any matter connected with the inquiry as assessors to assist and advise the Commission in the inquiry and the assessors shall be entitled to such travelling and other expenses as may be prescribed.”.

Amendment of
section 10A.

3. In section 10A of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

“(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, when an offence under sub-section (1) is alleged to have been committed, the High Court may take cognizance of such offence, without the case being committed to it, upon a complaint in writing, made by a member of a Commission or an officer of the Commission authorised by it in this behalf.

2 of 1974.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to

give notice to the accused of the offence alleged to have been committed by him.

(4) No High Court shall take cognizance of an offence under sub-section (1) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(5) A High Court taking cognizance of an offence under sub-section (1) shall try the case in accordance with the procedure for the trial of warrant cases instituted otherwise than on a police report before a court of a Magistrate:

Provided that the personal attendance of a member of a Commission as a complainant or otherwise is not required in such trial.

2 of 1974.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an appeal shall lie as a matter of right from any judgment of the High Court to the Supreme Court, both on facts and on law.

(7) Every appeal to the Supreme Court under sub-section (6) shall be preferred within a period of thirty days from the date of the judgment appealed from:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days."

4. In sub-section (2) of section 12 of the principal Act, after clause (c), the following clause shall be inserted, namely:—

(cc) the travelling and other expenses payable to assessors appointed under section 5B, and to persons summoned by the Commission to give evidence or to produce documents before it."

Amendment of section 12.

STATEMENT OF OBJECTS AND REASONS

Section 10A of the Commissions of Inquiry Act, 1952 provides for penalty for acts calculated to bring a Commission of Inquiry or any member thereof into disrepute and provides for the procedure for taking cognizance of such offence. Under the procedure specified in the section, the provisions of the Code of Criminal Procedure will apply and no prosecution can be launched except with the previous sanction of the Central Government or the State Government, as the case may be. It is proposed to amend this section to change this procedure to provide that an offence under this section is triable by the High Court by ordinary procedure prescribed under the Code of Criminal Procedure on a report of the Commission of Inquiry concerned without committal proceedings and that the personal attendance of the members of the Commission of Inquiry as complainants would not be necessary.

2. Opportunity is being availed of to give effect to the recommendations of the Committees on Subordinate Legislation of both the Houses of Parliament to the effect that the Commissions of Inquiry Act should be amended to make specific provision for appointment of assessors and for payment of travelling allowance and dearness allowance to assessors and witnesses. Such a provision at presents exists in the Commissions of Inquiry (Central) Rules, 1972, made under the Act.

3. The Bill seeks to achieve the above objects.

NEW DELHI;
The 18th August, 1988.

BUTA SINGH.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to make specific provision in the Commissions of Inquiry Act, 1952 for appointment of assessors and payment of TA/DA to the assessors. Similarly, clause 4 seeks to confer power on the appropriate Government to make rules relating to payment of travelling and other expenses payable to assessors and persons summoned by the Commission to give evidence before it. Hitherto, such matters have been provided for in the Commissions of Inquiry (Central) Rules, 1972. As the expenditure on this account will be incurred by the Commissions of Inquiry as and when necessary in furtherance of the purposes for which they are constituted, it is not possible to give any estimate thereof in advance. However, there will be no additional burden involved by the enactment of this Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill seeks to insert a new clause (cc) in sub-section (2) of section 12 of the Commissions of Inquiry Act, 1952 so as to enable the appropriate Government to provide by rules the travelling and other expenses payable to assessors appointed under the new section 5B of the Act and to persons summoned by the Commission to give evidence or to produce documents before the Commission.

2. The matters with respect to which rules may be made under the new clause are matters of administrative procedure or detail and as such the delegation of legislative power is normal in character.

SUBHASH C. KASHYAP,
Secretary-General.

